

#### Members

Rep. Sheila Klinker, Chairperson  
Rep. Robert Alderman  
Sen. Marvin Riegsecker  
Sen. Rose Ann Antich  
Sylvia Marie Brantley  
Christopher Durcholz  
Suda Hopkins  
Sally Lowery  
Ervin Picha  
Joanne Rains  
Thomas Van Meter  
Betty Williams



# INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

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Authority: P.L. 272-1999

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## MEETING MINUTES<sup>1</sup>

**Meeting Date:** July 25, 2000  
**Meeting Time:** 1:00 P.M.  
**Meeting Place:** State House, 200 W. Washington  
St., Room 128  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Rep. Sheila Klinker, Chairperson; Sen. Marvin Riegsecker; Sen. Rose Ann Antich; Sylvia Marie Brantley; Christopher Durcholz; Sally Lowery; Joanne Rains; Thomas Van Meter; Betty Williams.

**Members Absent:** Rep. Robert Alderman; Suda Hopkins; Ervin Picha.

### **Call to Order/Overview of Commission's Duties**

Representative Klinker called the meeting to order at approximately 1:10 p.m. After having the Commission members and LSA staff introduce themselves, Representative Klinker remarked that the Legislative Council has assigned two study topics to the Commission this interim: (1) the Infants and Toddlers with Disabilities program (i.e., "First Steps"); and (2) requiring persons who work with developmentally disabled individuals to undergo criminal history checks.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

## **Infants and Toddlers with Disabilities Program (First Steps)**

Senator Connie Lawson told the Commission that she had introduced SCR 47-2000, requesting that a study commission examine quality assurance and fiscal issues related to the First Steps program. She explained that, as the result of a constituent concern, she had originally filed a bill (SB 292-2000) to require all First Steps providers to be accredited by a national accreditation agency. She observed that this proposed change would have been in line with state law that requires accreditation of persons who provide vocational rehabilitation services to adults. Senator Lawson noted that when the bill received a committee hearing, it became obvious that there was much more to the issue than could be addressed during that one meeting. She remarked that the bill seemed to be perceived as a battle between individual providers and agency providers, which was not her intent in filing the bill.

Senator Lawson expressed the opinion that First Steps is a very good program, but stressed that there is always room for improvement in any program. She stated that there are thousands of First Steps providers and there needs to be a method to assure that all participating providers are providing quality services. Senator Lawson conceded that requiring providers to be accredited may not be the ultimate solution, but that other possibilities include requiring providers to have pediatric certification or to participate in a mentoring program.

Senator Lawson also stated that there are financial issues regarding First Steps that should be studied. In February, the Family and Social Services Administration (FSSA) provided her with information that First Steps was estimated to be \$6.2 million over its budget for 2000. She noted that a bill was introduced several years ago to allow a sliding fee scale for First Steps services, but the bill did not pass.

In response to questions from Representative Klinker, Senator Lawson acknowledged that she did not have the answer to how to best assure quality of First Step services, but stressed that the Commission should hear from parties on all sides of the issues--parents, agencies, individual providers, the Interagency Coordinating Council and FSSA. Senator Lawson also stated that she had heard varying opinions about providers going into participants' homes to provide services, including the fact that many parents like having the services provided in the home but that some providers refuse to go into certain areas due to safety concerns.

Commission member Chris Durcholz stated that from the perspective of a parent of a child with disabilities, quality assurance is very important. He stressed that whatever mechanism is used to assure quality, there should be no unnecessary red tape and there should be a system of checks and balances. He stated that an expedient complaint resolution process is also important. Senator Lawson responded that FSSA does have a complaint resolution process that appears to work well, but improvement is always possible.

Senator Riegsecker commented that if the Commission is going to study issues regarding quality assurance and cost containment in the First Steps program, the Commission should start out by reviewing some background information on the program, including who is served and what services are provided. Senator Lawson stated that she would provide such information to the Commission and also informed the Commission that First Steps is a non-income-driven program that provides early intervention services to infants and toddlers (until the age of three) who are developmentally disabled or delayed. She noted that Indiana was one the first states to implement First Steps and its program is considered a model to follow.

Representative Klinker stated that the Commission will hear testimony on the First Steps issues from any interested persons at the next meeting.

### **Criminal History Checks for Persons who work with the Developmentally Disabled**

Susan Preble, Legislative Liaison for the Family and Social Services Administration (FSSA), informed the Commission that FSSA is currently working on its internal hiring process, including criminal history and reference checks for all direct care staff in state institutions. FSSA's main goal is to protect residents of state facilities from persons who have a history of abuse, neglect, or misappropriation of property. FSSA believes that it must have its own process set firmly in place before trying to extend the process to community settings.

Responding to a question from Representative Klinker regarding SB 370-2000, Ms. Preble stated that SB 370 would have created a registry of direct care staff workers similar to the registry of nurse aides currently maintained by the State Department of Health. She also stated that FSSA currently has no position on the bill's possible revival but that no matter what, FSSA is committed to working with the unions to address the concerns that surrounded SB 370. Senator Riegsecker observed that the registry required by SB 370 would probably go a long way in showing the federal government that Indiana is committed to addressing concerns raised by the Health Care Financing Administration (HCFA).

At Representative Klinker's request, Costa Miller, Executive Director, Indiana Association for Rehabilitation Facilities (INARF), explained that SB 370 addressed three distinct issues: (1) accreditation of providers in all programs under DDARS; (2) changes to the structure and duties of the residential facilities council; and (3) the registry of direct care staff and requirement for criminal history checks. Mr. Miller stated that the goal of the accreditation portion of the bill was to even the field, as providers in some programs under DDARS are required to be accredited while others are not. He asserted that both the accreditation and residential facilities council portions of the bill were very viable. He commented that the criminal history check and registry portion of the bill was the contentious piece, with the bill not going far enough for INARF, but raising due process concerns for the unions who wanted to be able to unionize persons in the private sector utilizing public sector contract language. Representative Klinker noted that all parties worked very diligently on trying to reach a compromise before the session expired. Senator Riegsecker suggested that the bill could be split in the next legislative session so that the accreditation and council pieces are separate from the criminal history check and registry issues.

Commission member Tom Van Meter expressed concern that the accreditation requirement would force some smaller providers out of business. Mr. Miller acknowledged that accreditation does cost a provider money, but asserted that it would not force providers out of business, as the bill offered thresholds of exemption based on the volume of services generated by the provider and there are pieces of every accreditation process that can be applied on an individual basis. Mr. Van Meter stated that if the threshold level were set too low, it could still force many small providers out of business.

Commission member Sally Lowery related that an organization with which she is affiliated, the ARC of Vigo County, recently completed the accreditation process and found it very costly, stressful, and time consuming. Mr. Miller replied that from the information he had received concerning the situation, it was an aberration from the usual process. In fact, he observed that he had not heard of another such situation in the 35 years he has been involved in accreditation issues. He stated that one shouldn't condemn the entire

accreditation process based on one unusual case.

## **Update on FSSA**

Alex Braitman, Director, Division of Disability, Aging, and Rehabilitative Services (DDARS), introduced himself to the Commission and explained that he came to DDARS in January of this year as Deputy Director of the state developmental centers and has recently been serving as Acting Director of DDARS. He stated that he has been involved in the disabilities field as a provider (psychologist), case manager and an administrator. Most recently, he was employed at a Michigan community mental health center that served both developmentally disabled and mentally ill individuals.

On the issue of accreditation of all DDARS providers, Mr. Braitman informed the Commission that Michigan confers "deemed status" upon a provider who attempts to become accredited by a national organization. Also, for those small providers who cannot afford to undergo the accreditation process, Michigan has a small number of surveyors who go to the providers and approve or disapprove them based upon an established set of criteria.

Mr. Braitman explained to the Commission that John Hill, Deputy Director, Bureau of Developmental Disabilities Services, had intended to attend today's meeting but was ill. He then introduced Jacqueline Bouyea, Acting Superintendent of Muscatatuck State Developmental Center (MSDC), and Dr. Ajit Mukherjee, Superintendent of Fort Wayne State Developmental Center (FWSDC).

Ms. Bouyea introduced herself to the Commission, explaining that she comes to MSDC with a background in quality assurance and management, having most recently served in various capacities in Massachusetts and New York. Ms. Bouyea provided the Commission with a printed overview of MSDC. (Exhibit A.) She explained that in order to receive federal Medicaid reimbursement, a state developmental center must meet eight "conditions of participation." In February of 1999, the Indiana State Department of Health (ISDH) determined that MSDC was meeting only three of those conditions and MSDC was therefore decertified from receiving federal Medicaid funds. At the time of decertification, MSDC had 377 residents, with a budget of approximately \$40 million and a staff of about 1,000. Today, MSDC has 287 residents, a budget of approximately \$50 million and about the same number of staff. In June of this year, MSDC reached a goal of using no restraints. Ms. Bouyea noted that this does not mean that restraints will never be used again at MSDC, as they are sometimes necessary for resident protection, but the focus is now on more humane methods of behavior control. She stated that another accomplishment that MSDC has made is more training of staff regarding how to respect each resident's dignity and human rights. Residents are also being provided with more social activities on-campus and more off-campus day programs.

Ms. Bouyea explained that MSDC is currently working with ISDH to recertify the facility in four stages. Two stages have been completed. Responding to a question from Representative Klinker, Ms. Bouyea stated that she expects MSDC to be fully recertified within a year. She explained that MSDC continues to face many hiring challenges and is conducting an extensive recruitment process.

In response to a question from Senator Riegsecker, Alex Braitman expressed the opinion that getting MSDC fully recertified for Medicaid funding would go a long way in satisfying the concerns raised by the U.S. Department of Justice (DOJ) in its recent investigation. Mr. Braitman agreed with Senator Riegsecker that it appears that the DOJ's goal is to close all state developmental centers.

Responding to a question from Senator Antich, Ms. Bouyea noted that MSDC is currently investigating the possibility of establishing college internships at MSDC in as many disciplines as possible. She stated that state developmental centers can and should be used as regional training centers for college students. Ms. Bouyea agreed with Representative Klinker that loan forgiveness programs could help to alleviate some of the hiring problems, particularly in the professional disciplines.

Representative Klinker and other Commission members stated that when the Commission traveled to MSDC and FWSDC last summer, they were impressed with how much the workers at the centers truly cared for the residents and how open the administration was in allowing the Commission to look all around the centers. Commission members also expressed how overwhelmingly supportive the parents of center residents were of the centers.

Senator Riegsecker noted that the problems with the developmental centers can be corrected, but Indiana might have quite a battle on its hands if it is the DOJ's goal to close all institutions. Responding to a question from Senator Riegsecker, Mr. Braitman explained that the DOJ, which is charged with protecting the constitutional rights of residents of state developmental centers, can come back to the centers for a review or file court action at any time. He stated that FSSA is keeping the DOJ apprized of the progress being made at both MSDC and FWSDC.

Dr. Mukherjee told the Commission that FWSDC is the oldest state-operated facility in Indiana. Since the Commission's visit last year, FWSDC has achieved full employment (average fill rate of 1,060 out of 1,100 available positions) for the first time ever. However, some clinical positions remain difficult to fill. The current budget is about \$42 million. There are currently 352 residents at FWSDC, compared to 640 ten years ago. Eighty-three clients have been placed in community settings since the Commission's visit. The use of restraints has been reduced from 43.2/month to 22.6/month. No mechanical restraints of any kind are used. Use of psychotropic drugs has been reduced 7%. Two hundred ten persons, an increase of 50, work on campus. Five residents work part-time in the community and one resident works full-time. Twenty-eight residents have private, apartment-like bedrooms, and 11 residents have cell phones. The injury rate, which includes all injuries from bruises to death, has been reduced by more than 22%, down from 370 incidents/month to 287/month.

Dr. Mukherjee stated that, based on the type of clients served at FWSDC, there are three areas that need immediate attention at the center. First, there is a need for a forensic unit. Despite a state law that prohibits courts from committing an individual with an I.Q. above 70 to a state developmental center, Dr. Mukherjee still sees those types of individuals at FWSDC and still receives, on an almost weekly basis, requests to admit such individuals. Forensic individuals are not the types of persons that state developmental centers were designed to serve. Responding to a question from Senator Riegsecker, Dr. Mukherjee believes that a forensic unit for developmentally disabled persons needs to be established with a different type of clinical approach tailored to those individuals' specific needs. Second, the level of care provided in intermediate care facilities for the mentally retarded (ICF/MR) is not appropriate for individuals who need short-term care (e.g., individuals with mental illness who can safely return to the community after stabilization). Dr. Mukherjee reported that 65% of the residents of FWSDC are dually diagnosed individuals (i.e., both mentally ill and mentally retarded or developmentally disabled). Responding to a question from Representative Klinker, it is not a question of being able to treat these individuals at FWSDC, but a matter of money, since the state does not receive Medicaid reimbursement for individuals who do not require the ICF/MR level of care but must finance that care with 100% state funds. Third, attracting quality employees, especially in clinical positions, must

continue to be a priority. Salary levels are always a concern, as is the fact that no Indiana college or university provides specialized training regarding developmental disabilities. Dr. Mukherjee agreed with Representative Klinker that a loan forgiveness program would be a great idea to attract more clinical professionals to the state developmental centers. He also stated that FWSDC established its own music therapy internship program in cooperation with schools from around the country and the program has been very successful.

Responding to a question from Commission member Sally Lowery, Dr. Mukherjee explained that the developmental centers are not absolutely prohibited from ever using restraints, but that the overuse of restraints is what concerns the DOJ. While acknowledging that MSDC is a little ahead of FWSDC on the discontinuation of restraints, Dr. Mukherjee stressed that restraints are no longer used for behavior problems but are only used for resident or staff safety. Ms. Bouyea agreed that restraints are in some cases necessary, but the emphasis is now on using more humane alternatives whenever possible.

In response to a question from Commission member Betty Williams, Alex Braitman noted that many of the individuals in the state developmental centers who do not meet the ICF/MR level of care have been committed there by court order. He also stated that the Governor's Council on State Operated Facilities is currently looking at various issues regarding all state operated facilities, including an analysis of the populations served and the need for improved community capacity for intensive treatment. Responding to a comment by Representative Klinker regarding the commitment of mentally retarded and developmentally disabled individuals convicted of crimes to state developmental centers out of concerns for safety in local jails, Mr. Braitman noted that some states have created forensic centers for convicted criminals who are mentally ill, mentally retarded, or developmentally disabled. He explained that these centers look more like a jail than an ICF/MR facility, but still provide treatment for the offenders.

Mr. Braitman shared with the Commission the following information that had been prepared by John Hill:

- In 1980, the number of residents in Indiana state developmental centers was between 1,980 and 2,600. Today, the number is approximately 650-700.
- As of June 30, 1999, more than 1,600 individuals were receiving respite services and more than 3,300 individuals were receiving supportive living services.
- As of July 1, 2000, there were 2,306 individuals receiving services through home and community based Medicaid waivers.
- The 317 Task Force Plan was implemented on July 1, 1999, and 837 individuals are now receiving community based services through the funding received as part of this plan. This represents almost the halfway point of the goal of serving 1,757 individuals by June 30, 2001, a goal which FSSA expects to achieve.

Mr. Braitman noted that one of the reasons he decided to come to Indiana was the 317 Plan and Indiana's commitment to expanding community based services.

Kim Dodson, Director of Governmental Relations and Development, The ARC of Indiana, reassured the Commission that there continues to be a positive, cooperative relationship between FSSA and The ARC and other advocacy groups. The advocacy associations are very happy with the selection of Katie Humphreys as the new Secretary of Family and Social Services. Ms. Dodson distributed to the Commission a copy of the fiscal year 2000 year-end 317 Management Report. (Exhibit B.) Ms. Dodson explained that this document reflects the individuals who have been provided services through 317 funds and how those

funds have been spent. She noted that 837 individuals have received services, including 545 people who have come off the waiting list. Responding to a question from Representative Klinker, Ms. Dodson stated that there is currently no definitive answer as to how many individuals are on the waiting list. She stated that the list continues to grow even though more people are being provided with services, because with the implementation of the 317 plan many individuals who have never been on the waiting list before are now signing up. At Representative Klinker's request, Ms. Dodson will provide the Commission with the most definitive number possible.

In response to a question from Commission member Chris Durcholz, Ms. Dodson stated that individuals who are on the autism waiver waiting list are also placed on the ICF/MR waiting list, with the earlier application date controlling. Mr. Durcholz expressed concern with this procedure as it might result in persons on the ICF/MR waiting list having to wait longer because someone on the autism waiting list was also on the ICF/MR list. Ms. Dodson reported that FSSA has agreed to conduct a study of all waiver waiting lists, similar to a study recently completed by Pennsylvania. At Representative Klinker's request, Ms. Dodson agreed to get a copy of the Pennsylvania study to the Commission.

Ms. Dodson also informed the Commission that the ARC, in cooperation with FSSA and the Area Agencies on Aging (AAA), has been hosting forums around the state regarding the implementation of the 317 Plan and the development of a funding request for the next legislative session. Responding to a question from Commission member Chris Durcholz, Ms. Dodson stated that the ARC, along with INARF, is currently estimating a funding request of \$54 million over the next biennium. This represents \$12 million each year to address wage parity in community settings, \$10 million in fiscal year 2000-2001, and \$20 million in fiscal year 2001-2002 to further reduce the waiting list. This request would increase wages approximately \$1/hour and provide services to approximately 1,200 to 1,500 people on the waiting list. Costa Miller noted that this increase in wages would bring wages in community settings up to about \$7 to \$7.50/hour, which is the minimum necessary to be competitive with the fast food industry. He also noted that this \$54 million figure does not include any funding for quality assurance. In response to a question by Representative Klinker regarding the anticipated response of the legislature to this funding request so soon after the \$39 million appropriation in the last budget, Mr. Miller stated that the 317 Plan was a long-term proposition which estimated the total amount of money needed at approximately \$142 million. Mr. Miller agreed with Representative Klinker that it would be wise to again provide the legislature with an explanation of and education on the 317 Plan. Ms. Dodson noted that the forums being held by the ARC are including both legislators and candidates.

### **Next Meeting & Adjournment**

The next meeting of the Commission will be held on Tuesday August 29, 2000, at 1:00 p.m. Issues on the agenda will include the First Steps program and requiring criminal history checks for direct care staff. Persons wishing to testify on these issues should contact Representative Klinker or Carrie Cloud, the staff attorney for the Commission.

There being no further business to come before the Commission, Representative Klinker adjourned the meeting at approximately 3:25 p.m.